



GAO

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: NAS/CORP-TELMAH, Inc.

File: B-405632

Date: December 2, 2011

William L. Bruckner, Esq., Bruckner & Walker, for the protester.
Julia P. Hatch, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation in negotiated procurement is unobjectionable where agency's changed requirements, including changed evaluation scheme, provided a reasonable basis for the cancellation.

DECISION

NAS/CORP-TELMAH, Inc., of Albuquerque, New Mexico, protests the Department of the Navy's cancellation of request for quotations (RFQ) No. N00259-11-T-0238, issued for a microscope for the Naval Hospital at Camp Pendleton, California.

We deny the protest.

The RFQ was issued on a brand name or equal basis for a microscope, Zeiss model No. OPMI VARIO 700 P&R XY with a wireless footpedal. RFQ at 2. NAS/CORP submitted an offer for a MOELLER model No. HiR 1000 microscope for \$129,998. NAS/CORP Quotation. After the agency awarded a contract to Metro Medical for the brand name Zeiss microscope at a price of \$137,500, NAS/CORP protested to the Navy that it offered an equal microscope at a lower price and thus was entitled to the award. In response, the agency cancelled the solicitation.

NAS/CORP now protests the cancellation to our office. According to NAS/CORP, since it submitted an offer for an equal microscope there was no reason for the agency to cancel the solicitation. NAS/CORP believes that it is entitled to the award and that the agency only cancelled the solicitation to avoid responding to its protest.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Major Contracting Servs., Inc., B-400737.2, Dec. 17, 2008, 2008 CPD ¶ 230 at 2. Where, as here, a protester alleges that an agency's rationale for cancellation is but a pretext to avoid resolving a protest, we review the agency's rationale to ensure that the agency has a reasonable basis for the cancellation. See Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12 at 7.

Here, the agency explains that it was necessary to cancel the solicitation because the basis of award set forth in the solicitation did not reflect the agency's intended procurement approach. Agency Report at 4, Agency Supplemental Statement (Oct. 14) at 1. In this regard, the agency explains that it intended to conduct the procurement on pass/fail basis with the award going to the low priced, technically acceptable offeror. Instead, with respect to proposal evaluation and award, the solicitation provided as follows:

52.212-2, EVALUATION--COMMERCIAL ITEMS

(a) The government will award a contract resulting from this solicitation to the offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

(i) technical capability of the item offered to meet the Government requirement; (ii) price in descending order of RFQ at 17.

We agree with the agency that the language used in the solicitation appears to indicate that the contract would be awarded on the basis of the best value to the government. Specifically, when a solicitation indicates that an award will be made based on what is most advantageous to the government, and lists factors in descending order of importance, it generally indicates that the agency plans to make award on a best value basis. See Federal Acquisition Regulation § 15.101-1; Curtis Center Ltd. Partnership--Recon., B-257863.3, Mar. 20, 1995, 95-1 CPD ¶ 147 at 2, n.2. Since the agency intended to award the contract on the basis of the lowest priced, technically acceptable offer, the agency had a reasonable basis to cancel the solicitation. In this regard, it is fundamental that vendors should be advised of the basis on which their offers will be evaluated. See C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel